

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201306006**

Release Date: 2/8/2013

Index Number: 351.01-00, 355.01-00, 368.04-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-119801-12

Date:

November 05, 2012

Legend

Distributing 5 =

Distributing 4 =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Controlled 2 =

Controlled 1 =

Sub 1 =

Sub 2 =

Sub 3 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

PLR-119801-12

3

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LLC 12 =

LLC 13 =

LLC 14 =

LLC 15 =

LLC 16 =

LLC 17 =

LLC 18 =

PLR-119801-12

4

LLC 19 =

Pship 1 =

Pship 2 =

Business A =

Business A1 =

Business A1a =

Business A2 =

Business A2a =

Business B =

Business B2 =

Business C =

State A =

State B =

State C =

State D =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to your May 4, 2012 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a series of proposed transactions. Additional information was received subsequently. The information provided in these letters is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any of the distributions described below: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of a distributing corporation or a controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code ("Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in a distributing corporation or a controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Publicly traded Distributing 5, a State A corporation, is the common parent of an affiliated group of domestic corporations, the includible members of which join in filing a consolidated return for federal income tax purposes (the "Distributing 5 Group"). The outstanding stock of Distributing 5 consists of a single class of common stock. Based

on publicly available securities information, only Shareholder A, Shareholder B, Shareholder C, Shareholder D and Shareholder E held five percent or more of the common stock on Date 1. The remaining shares were and are widely held and publicly traded. Certain directors and employees of Distributing 5 hold Distributing 5 stock issued in connection with the performance of services (the “Existing Distributing 5 Restricted Stock”).

Distributing 5 is a holding company with no assets other than LLC 13, a shell entity organized as a State A limited liability company disregarded as separate from Distributing 5 for federal tax purposes under § 301.7701-3 (a “disregarded entity”) and all of the outstanding stock of Distributing 4, a State A corporation. Distributing 4 wholly owns Distributing 3, a State A corporation, and LLC 1, LLC 2, LLC 3 and LLC 4, all of which are State A disregarded entities. Distributing 4 also owns interests in other corporations, disregarded entities and partnerships. Distributing 4 and the entities it owns directly and indirectly conduct Business A (consisting of Businesses A1, A1a, A2, and A2a), Business B (including Business B2) and Business C. Distributing 4 and these entities (excluding entities in the Distributing 3 Group (defined below)) are referred to collectively as the “Distributing 4 Group.”

LLC 1 owns LLC 5, a State A disregarded entity. LLC 1, LLC 2, LLC 4 and LLC 5 own interests in various corporations, other disregarded entities and partnerships engaged in Business A1 and Business A2. Those engaged in Business A2 will be contributed to Controlled 2, a newly formed corporation, and ultimately distributed to the shareholders of Distributing 5 in the External Distribution (defined below). These are referred to as the “LLC 1-Owned A2 Entities,” “LLC 2-Owned A2 Entities,” “LLC 4-Owned A2 Entities” and “LLC 5-Owned A2 Entities.” LLC 3 acts as a holding company for most of the entities engaged in Business B.

Distributing 3 wholly owns Sub 3, a State A corporation, and owns LLC 6 and LLC 14, each a State A disregarded entity. Distributing 3 also owns interests in other corporations, disregarded entities and partnerships. Distributing 3 and the entities it owns directly and indirectly (including Distributing 2 and Distributing 1) are referred to collectively as the “Distributing 3 Group.”

Sub 3 owns LLC 12, a State A disregarded entity. LLC 6 wholly owns Distributing 2, a State A limited liability company that has elected to be treated as a corporation for federal tax purposes under § 301.7701-3. LLC 6 also owns LLC 7, a State A disregarded entity. LLC 14 and the entities it owns conduct Business C.

Distributing 2 wholly owns Distributing 1, a State B corporation; Sub 1, a State C corporation; and Sub 2, a State D corporation. Distributing 2 also owns interests in other corporations, disregarded entities and partnerships.

LLC 7 owns LLC 8, LLC 9 and LLC 10, each a State A disregarded entity. LLC 10 owns an a percent interest in Pship 1, a State A partnership. LLC 12 owns the remaining b percent.

Distributing 1 owns LLC 11, and LLC 11 owns LLC 15 and c percent of Pship 2, a State A limited liability company treated as a partnership for federal tax purposes. The remaining d percent of Pship 2 is owned by unrelated persons. Pship 2 owns LLC 16. LLC 11, LLC 15 and LLC 16 are State A disregarded entities. LLC 15, LLC 16 and Pship 2 (together, the "Pship 2 Entities") conduct Business A2a.

Sub 1 owns LLC 17, LLC 18 and LLC 19, each a State A disregarded entity. LLC 17, LLC 18 and LLC 19 conduct Business A1a. Sub 1 is now and will continue to be following the External Distribution a member of the separate affiliated group ("SAG," as defined in § 355(b)(3)(B)) of Distributing 5 (the "Distributing 5 SAG"), Distributing 4 (the "Distributing 4 SAG"), Distributing 3 (the "Distributing 3 SAG"), Distributing 2 (the "Distributing 2 SAG") and Distributing 1 (the "Distributing 1 SAG"). Each of these distributing corporations will rely on Business A1a of Sub 1 (conducted through LLC 17, LLC 18 and LLC 19) to satisfy the active trade or business requirement of § 355(b). Controlled 1 and Controlled 2 will rely on Business A2a (conducted by the Pship 2 Entities) to satisfy this requirement. Financial information has been submitted indicating that Business A1a and Business A2a each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Intercompany accounts of the Distributing 5 Group include (i) accounts between Distributing 4 on the one hand and entities in the Distributing 3 Group on the other (the "Distributing 3 Accounts") and (ii) accounts between Distributing 4 on the one hand and entities in the Distributing 4 Group not included in the Distributing 3 Group on the other (the "Non-Distributing 3 Accounts"). In addition, Pship 2 has two outstanding intercompany loans: (i) a revolving credit facility of e with Distributing 4 (the "Pship 2 Revolver") and (ii) a term loan of f held by Pship 1 (the "Pship 2 Term Loan"). Certain other partnerships in the Distributing 5 Group also have term loans or revolving credit obligations to Distributing 4 (the "Other Partnership Debt").

Management desires to separate Business A1 from Business A2. It believes such a separation will: (a) permit the senior management of Distributing 5 to focus solely on Business A1 and the management of Controlled 2 to focus solely on Business A2, thereby (i) allowing each business to pursue its own distinct opportunities and growth plans and (ii) eliminating internal competition for capital and other inherent managerial and operational conflicts between the businesses; (b) permit Business A2 to develop a more tailored operating and marketing strategy that addresses the unique aspects of the Business A2 operations; and (c) permit Business A2 to obtain greater access to capital markets and pursue strategic acquisitions leading to increased growth (collectively, the "Corporate Business Purposes").

Proposed Transactions

To achieve the separation, management has therefore proposed the following series of transactions (collectively, the “Proposed Transactions”):

- (i) Distributing 2 will contribute all the stock of Sub 1 to Distributing 1 (“Contribution 1”).
- (ii) Pship 1 will distribute the Pship 2 Term Loan (receivable) to its partners, LLC 10 and LLC 12, and they will distribute their interests in the receivable to LLC 7 and Sub 3, respectively. LLC 7 then will distribute its interest in the receivable to LLC 6, and LLC 6 and Sub 3 will distribute their interests to Distributing 3, giving Distributing 3 the entire Pship 2 Term Loan.
- (iii) LLC 11 will distribute its c percent interest in Pship 2 and all of the interests in LLC 15 to Distributing 1.
- (iv) Distributing 1 will contribute its interests in LLC 15 and Pship 2 (and thereby its interest in LLC 16) to newly formed Controlled 1 in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of related liabilities (“Contribution 2”).
- (v) Distributing 1 will distribute the Controlled 1 stock to Distributing 2 (“Internal Distribution 1”).
- (vi) Distributing 2 will contribute the stock of Sub 2 to Controlled 1 (“Contribution 3”).
- (vii) Distributing 2 will distribute the Controlled 1 stock to LLC 6.
- (viii) LLC 6 will distribute the Controlled 1 stock to Distributing 3 (together with the distribution in Step (vii), “Internal Distribution 2”).
- (ix) LLC 7 will distribute its interests in LLC 8 and LLC 9 to LLC 6, and LLC 6 will distribute the interests to Distributing 3.
- (x) Distributing 4 will contribute the Pship 2 Revolver to Distributing 3 (the “Pship 2 Revolver Contribution”).
- (xi) Each Distributing 3 Account (between Distributing 4 and the Distributing 3 Group) will be settled either by (i) having Distributing 4 contribute the account balance to the capital of Distributing 3 with subsequent contributions down the chain of entities to the relevant obligor (a “Distributing 3 Account Contribution”) or (ii) having the relevant obligee distribute the account balance to its owner with subsequent distributions

up the chain of entities to Distributing 4. No shares will be issued in exchange for these transfers.

- (xii) Distributing 3 will contribute its interest in LLC 14, the interests received in Step (ix), the Pship 2 Term Loan and Pship 2 Revolver to Controlled 1 (“Contribution 4”).
- (xiii) Distributing 3 will distribute the Controlled 1 stock to Distributing 4 (“Internal Distribution 3”).
- (xiv) LLC 5 will distribute the LLC 5-Owned A2 Entities to LLC 1; LLC 1 will distribute the LLC 5-Owned A2 Entities and the LLC 1-Owned A2 Entities to Distributing 4; LLC 2 will distribute the LLC 2-Owned A2 Entities to Distributing 4; and LLC 4 will distribute the LLC 4-Owned A2 Entities to Distributing 4.
- (xv) Each Non-Distributing 3 Account balance (between Distributing 4 and entities in the Distributing 4 Group not included in the Distributing 3 Group) will be settled either (i) by having Distributing 4 contribute the account balance down the chain of entities to the capital of the relevant obligor or (ii) by having the relevant obligee distribute the account balance up the chain of entities to Distributing 4. No shares will be issued in exchange for these transfers.
- (xvi) Distributing 4 will form Controlled 2, which is expected to be a State A corporation. Controlled 2 will borrow money under commercially standard terms from a third-party lender (the “Cash Proceeds”).
- (xvii) Distributing 4 will contribute the interests received in Step (xiv), the Other Partnership Debt, the Business B2 assets and the Controlled 1 stock to Controlled 2 in exchange for all of the Controlled 2 stock, the Cash Proceeds and the assumption by Controlled 2 of related liabilities (“Contribution 5”). Controlled 2 and the entities owned by Controlled 2 will be referred to as the “Controlled 2 Group.”
- (xviii) Distributing 4 will use all of the Cash Proceeds to repay debt to unrelated third parties within 12 months following Internal Distribution 4 (defined in Step (xix) below).
- (xix) Distributing 4 will distribute the Controlled 2 stock to Distributing 5 (“Internal Distribution 4”).
- (xx) Distributing 5 will distribute the Controlled 2 stock to its shareholders, pro rata (the “External Distribution,” and together with Internal Distribution 1,

Internal Distribution 2, Internal Distribution 3 and Internal Distribution 4, the “Distributions”).

No fractional shares of Controlled 2 stock will be issued in the External Distribution. Instead, all fractional shares of Controlled 2 stock that Distributing 5 shareholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the External Distribution, will be sold at the prevailing price on a stock exchange that will be determined. Any Distributing 5 shareholder entitled to receive a fractional share of Controlled 2 stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sale.

In connection with the Proposed Transactions, the Distributing 5 Group and the Controlled 2 Group will enter into various agreements (collectively, the “Continuing Relationships”), including a Separation and Distribution Agreement, a Tax Matters Agreement and a Transitional Services Agreement. Indemnification provisions in the Separation and Distribution Agreement and the Tax Matters Agreement relating to liabilities arising before, but not becoming fixed and determinable until after, the External Distribution are referred to as the “Liability Arrangements.”

Representations

Contribution 1

The following representations have been made regarding Contribution 1:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Distributing 1 in connection with Contribution 1, and no stock or securities will be issued for indebtedness of Distributing 1 in Contribution 1 that is not evidenced by a security or for interest on indebtedness of Distributing 1 which accrued on or after the beginning of the holding period of Distributing 2 for the debt.
- (b) Contribution 1 will not be the result of the solicitation by a promoter, broker or investment house.
- (c) Distributing 2 will not retain any rights in the property transferred to Distributing 1 in Contribution 1.
- (d) None of the stock to be transferred is “§ 306 stock” within the meaning of § 306(c) of the Code.
- (e) Except for indebtedness arising in the ordinary course of business, there is no indebtedness between Distributing 1 and Distributing 2, and there will be no indebtedness created in favor of Distributing 2 as a result of Contribution 1.

- (f) The transfer will occur under a plan agreed upon before Contribution 1 in which the rights of the parties are defined. There will be no exchanges, and no stock of Distributing 1 will be issued in connection with the transfer.
- (g) Taking into account (i) any issuance of additional shares of Distributing 1 stock; (ii) any issuance of stock for services; and (iii) the exercise of any Distributing 1 stock rights, warrants or subscriptions; a public offering of Distributing 1 stock; and the sale, exchange, transfer by gift or other disposition of any stock of Distributing 1 to be received in the exchange, Distributing 2 will be in “control” of Distributing 1 within the meaning of § 368(c) after Contribution 1.
- (h) Distributing 1 will remain in existence and retain and use the property transferred to it in a trade or business.
- (i) There is no plan or intention by Distributing 1 to dispose of the transferred property other than in the normal course of business operations.
- (j) Each of the parties to Contribution 1 will pay its own expenses, if any, incurred in connection with such contribution.
- (k) Distributing 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (l) Distributing 2 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (m) Distributing 1 will not be a “personal service corporation” within the meaning of § 269A.

Contribution 2 and Internal Distribution 1

The following representations have been made regarding Contribution 2 and Internal Distribution 1:

- (n) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after Internal Distribution 1 will not constitute stock or securities.
- (o) No part of the consideration distributed by Distributing 1 in Internal Distribution 1 will be received by Distributing 2 as a creditor, employee or in any capacity other than that of a shareholder of Distributing 1.

- (p) Distributing 1 and Controlled 1 each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (q) The five years of financial information submitted for Business A1a conducted by the Distributing 1 SAG and for Business A2a to be conducted by the Controlled 1 SAG (which includes the Pship 2 Entities following Contribution 2) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (r) Neither Business A1a conducted by the Distributing 1 SAG nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 1, Sub 1 (through LLC 17, LLC 18 and LLC 19) will have been the principal owner of the goodwill and significant assets of Business A1a and will continue to be the principal owner following Internal Distribution 1.
- (s) Neither Business A2a to be conducted by Controlled 1 (through the Pship 2 Entities) nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 1, the Pship 2 Entities will have been the principal owners of the goodwill and significant assets of Business A2a and will continue to be the principal owners following Internal Distribution 1.
- (t) Apart from the Continuing Relationships, the Distributing 1 SAG will continue the active conduct of Business A1a, independently and with its separate employees, following Internal Distribution 1.
- (u) Apart from the Continuing Relationships, Controlled 1 (through the Pship 2 Entities following Contribution 2) will continue the active conduct of Business A2a, independently and with its separate employees, following Internal Distribution 1.
- (v) Internal Distribution 1 will be carried out to facilitate the External Distribution, which is being undertaken to accomplish the Corporate Business Purposes. Internal Distribution 1 is motivated in whole or substantial part by the Corporate Business Purposes.

- (w) Internal Distribution 1 will not be used principally as a device for the distribution of the earnings and profits of Controlled 1 or Distributing 1 or both.
- (x) There is no plan or intention to liquidate any member of the Distributing 1 SAG engaged in Business A1a or any member of the Controlled 1 SAG engaged in Business A2a, to merge any member of the Distributing 1 SAG or Controlled 1 SAG with any other entity or to sell or otherwise dispose of the assets of any member after Internal Distribution 1, except in the ordinary course of business.
- (y) The total adjusted basis and the fair market value of the assets transferred by Distributing 1 to Controlled 1 in Contribution 2 will equal or exceed the sum of (i) the total liabilities to be assumed (as determined under § 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 from Controlled 1 and transferred to Distributing 1 creditors in connection with the reorganization.
- (z) Any liabilities assumed (as determined under § 357(d)) by Controlled 1 in Contribution 2 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (aa) The total fair market value of the assets transferred to Controlled 1 in Contribution 2 will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 in connection with Contribution 2; (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with Contribution 2; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with Contribution 2. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after Contribution 2.
- (bb) The aggregate fair market value of the assets Distributing 1 transfers to Controlled 1 in Contribution 2 will equal or exceed the aggregate adjusted basis of those assets.
- (cc) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of Contribution 2 and Internal Distribution 1.
- (dd) No two parties to Internal Distribution 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

- (ee) Immediately before Internal Distribution 1, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before Internal Distribution 1 to the extent required by regulations (see § 1.1502-19). At the time of Internal Distribution 1, Distributing 1 will not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.
- (ff) Apart from debt arising in the Continuing Relationships and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) at the time of, or after, Internal Distribution 1.
- (gg) Payments made in connection with all continuing transactions between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (hh) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1.
- (ii) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1 or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1.

- (jj) Internal Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 1 or Distributing 1 (including any predecessor or successor of either corporation).
- (kk) Immediately after the transaction (as defined in § 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before Internal Distribution 1, or (ii) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (ll) There is no regulatory, legal, contractual or economic compulsion or requirement that Contribution 1 or any Distributing 3 Account Contribution be made as a condition of Internal Distribution 1.

Contribution 3 and Internal Distribution 2

The following representations have been made regarding Contribution 3 and Internal Distribution 2:

- (mm) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after Internal Distribution 2 will not constitute stock or securities.
- (nn) No part of the consideration distributed by Distributing 2 in Internal Distribution 2 will be received by Distributing 3 as a creditor, employee or in any capacity other than that of a shareholder of Distributing 2.
- (oo) Distributing 2 and Controlled 1 each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (pp) The five years of financial information submitted for Business A1a conducted by the Distributing 2 SAG and for Business A2a to be conducted by the Controlled 1 SAG (which includes the Pship 2 Entities) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.

- (qq) Neither Business A1a conducted by the Distributing 2 SAG nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 2, Sub 1 (through LLC 17, LLC 18 and LLC 19) will have been the principal owner of the goodwill and significant assets of Business A1a and will continue to be the principal owner following Internal Distribution 2.
- (rr) Neither Business A2a to be conducted by Controlled 1 (through the Pship 2 Entities) nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 2, the Pship 2 Entities will have been the principal owners of the goodwill and significant assets of Business A2a and will continue to be the principal owners following Internal Distribution 2.
- (ss) Apart from the Continuing Relationships, the Distributing 2 SAG will continue the active conduct of Business A1a, independently and with its separate employees, following Internal Distribution 2.
- (tt) Apart from the Continuing Relationships, Controlled 1 (through the Pship 2 Entities) will continue the active conduct of Business A2a, independently and with its separate employees, following Internal Distribution 2.
- (uu) Internal Distribution 2 will be carried out to facilitate the External Distribution, which is being undertaken to accomplish the Corporate Business Purposes. Internal Distribution 2 is motivated in whole or substantial part by the Corporate Business Purposes.
- (vv) Internal Distribution 2 will not be used principally as a device for the distribution of the earnings and profits of Controlled 1 or Distributing 2 or both.
- (ww) There is no plan or intention to liquidate any member of the Distributing 2 SAG engaged in Business A1a or any member of the Controlled 1 SAG engaged in Business A2a, to merge any member of the Distributing 2 SAG or Controlled 1 SAG with any other entity or to sell or otherwise dispose of the assets of any member after Internal Distribution 2, except in the ordinary course of business.
- (xx) The total adjusted basis and the fair market value of the assets transferred by Distributing 2 to Controlled 1 in Contribution 3 each will equal or exceed

the sum of (i) the total liabilities to be assumed (as determined under § 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 2 from Controlled 1 and transferred to Distributing 2 creditors in connection with the reorganization.

- (yy) Any liabilities assumed (as determined under § 357(d)) by Controlled 1 in Contribution 3 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (zz) The total fair market value of the assets transferred to Controlled 1 in Contribution 3 will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 in connection with Contribution 3; (ii) the amount of any liabilities owed to Controlled 1 by Distributing 2 that are discharged or extinguished in connection with Contribution 3; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with Contribution 3. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after Contribution 3.
- (aaa) The aggregate fair market value of the assets Distributing 2 transfers to Controlled 1 in Contribution 3 will equal or exceed the aggregate adjusted basis of those assets.
- (bbb) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of Contribution 3 and Internal Distribution 2.
- (ccc) No two parties to Internal Distribution 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (ddd) Immediately before Internal Distribution 2, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 2 has in the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before Internal Distribution 2 to the extent required by regulations (see § 1.1502-19). At the time of Internal Distribution 2, Distributing 2 will not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.

- (eee) Apart from debt arising in the Continuing Relationships and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) at the time of, or after, Internal Distribution 2.
- (fff) Payments made in connection with all continuing transactions between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (ggg) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2.
- (hhh) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2 or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2.
- (iii) Internal Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 1 or Distributing 2 (including any predecessor or successor of either corporation).
- (jjj) Immediately after the transaction (as defined in § 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before Internal Distribution

2, or (ii) neither Distributing 2 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

- (kkk) There is no regulatory, legal, contractual or economic compulsion or requirement that any Distributing 3 Account Contribution be made as a condition of Internal Distribution 2.

Contribution 4 and Internal Distribution 3

The following representations have been made regarding Contribution 4 and Internal Distribution 3:

- (III) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 3 (or any entity controlled directly or indirectly by Distributing 3) after Internal Distribution 3 will not constitute stock or securities.
- (mmm) No part of the consideration distributed by Distributing 3 in Internal Distribution 3 will be received by Distributing 4 as a creditor, employee or in any capacity other than that of a shareholder of Distributing 3.
- (nnn) Distributing 3 and Controlled 1 each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (ooo) The five years of financial information submitted for Business A1a conducted by the Distributing 3 SAG and for Business A2a to be conducted by the Controlled 1 SAG (which includes the Pship 2 Entities) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (ppp) Neither Business A1a conducted by the Distributing 3 SAG nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 3, Sub 1 (through LLC 17, LLC 18 and LLC 19) will have been the principal owner of the goodwill and significant assets of Business A1a and will continue to be the principal owner following Internal Distribution 3.
- (qqq) Neither Business A2a to be conducted by Controlled 1 (through the Pship 2 Entities) nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal

Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 3, the Pship 2 Entities will have been the principal owners of the goodwill and significant assets of Business A2a and will continue to be the principal owners following Internal Distribution 3.

- (rrr) Apart from the Continuing Relationships, the Distributing 3 SAG will continue the active conduct of Business A1a, independently and with its separate employees, following Internal Distribution 3.
- (sss) Apart from the Continuing Relationships, Controlled 1 (through the Pship 2 Entities) will continue the active conduct of Business A2a, independently and with its separate employees, following Internal Distribution 3.
- (ttt) Internal Distribution 3 will be carried out to facilitate the External Distribution, which is being undertaken to accomplish the Corporate Business Purposes. Internal Distribution 3 is motivated in whole or substantial part by the Corporate Business Purposes.
- (uuu) Internal Distribution 3 will not be used principally as a device for the distribution of the earnings and profits of Controlled 1 or Distributing 3 or both.
- (vvv) There is no plan or intention to liquidate any member of the Distributing 3 SAG engaged in Business A1a or any member of the Controlled 1 SAG engaged in Business A2a, to merge any member of the Distributing 3 SAG or Controlled 1 SAG with any other entity or to sell or otherwise dispose of the assets of any member after Internal Distribution 3, except in the ordinary course of business.
- (www) The total adjusted basis and the fair market value of the assets transferred by Distributing 3 to Controlled 1 in Contribution 4 each will equal or exceed the sum of (i) the total liabilities to be assumed (as determined under § 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 3 from Controlled 1 and transferred to Distributing 3 creditors in connection with the reorganization.
- (xxx) Any liabilities assumed (as determined under § 357(d)) by Controlled 1 in Contribution 4 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (yyy) The total fair market value of the assets transferred to Controlled 1 in Contribution 4 will exceed the sum of (i) the amount of any liabilities

assumed (as determined under § 357(d)) by Controlled 1 in connection with Contribution 4; (ii) the amount of any liabilities owed to Controlled 1 by Distributing 3 that are discharged or extinguished in connection with Contribution 4; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 3 in connection with Contribution 4. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after Contribution 4.

- (zzz) The aggregate fair market value of the assets Distributing 3 transfers to Controlled 1 in Contribution 4 will equal or exceed the aggregate adjusted basis of those assets.
- (aaaa) Distributing 3 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of Contribution 4 and Internal Distribution 3.
- (bbbb) No two parties to Internal Distribution 3 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (cccc) Immediately before Internal Distribution 3, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 3 has in the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before Internal Distribution 3 to the extent required by regulations (see § 1.1502-19). At the time of Internal Distribution 3, Distributing 3 will not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.
- (dddd) Apart from debt arising in the Continuing Relationships and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 3 (or any entity controlled directly or indirectly by Distributing 3) at the time of, or after, Internal Distribution 3.
- (eeee) Payments made in connection with all continuing transactions between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Distributing 3 (or any entity controlled directly or indirectly by Distributing 3) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (ffff) For purposes of § 355(d), immediately after Internal Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 3.
- (gggg) For purposes of § 355(d), immediately after Internal Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 3 or (ii) attributable to distributions on Distributing 3 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 3.
- (hhhh) Internal Distribution 3 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 1 or Distributing 3 (including any predecessor or successor of either corporation).
- (iiii) Immediately after the transaction (as defined in § 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before Internal Distribution 3, or (ii) neither Distributing 3 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (jjjj) There is no regulatory, legal, contractual or economic compulsion or requirement that any Distributing 3 Account Contribution or the Pship 2 Revolver Contribution be made as a condition of Internal Distribution 3.

Contribution 5 and Internal Distribution 4

The following representations have been made regarding Contribution 5 and Internal Distribution 4:

- (kkkk) Any indebtedness owed by Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) to Distributing 4 (or any entity controlled directly or indirectly by Distributing 4) after Internal Distribution 4 will not constitute stock or securities.
- (llll) No part of the consideration distributed by Distributing 4 in Internal Distribution 4 will be received by Distributing 5 as a creditor, employee or in any capacity other than that of a shareholder of Distributing 4.
- (mmmm) Distributing 4 and Controlled 2 each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (nnnn) The five years of financial information submitted for Business A1a conducted by the Distributing 4 SAG and for Business A2a to be conducted by the Controlled 2 SAG (which includes Controlled 1 and the Pship 2 Entities) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (oooo) Neither Business A1a conducted by the Distributing 4 SAG nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 4, Sub 1 (through LLC 17, LLC 18 and LLC 19) will have been the principal owner of the goodwill and significant assets of Business A1a and will continue to be the principal owner following Internal Distribution 4.
- (pppp) Neither Business A2a to be conducted by Controlled 2 (through Controlled 1 and the Pship 2 Entities) nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of Internal Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Internal Distribution 4, Controlled 1 and/or the Pship 2 Entities will have been the principal owners of the goodwill and significant assets of Business A2a and will continue to be the principal owners following Internal Distribution 4.

- (qqqq) Apart from the Continuing Relationships, the Distributing 4 SAG will continue the active conduct of Business A1a, independently and with its separate employees, following Internal Distribution 4.
- (rrrr) Apart from the Continuing Relationships, Controlled 2 (through Controlled 1 and the Pship 2 Entities following Contribution 5) will continue the active conduct of Business A2a, independently and with its separate employees, following Internal Distribution 4.
- (ssss) Internal Distribution 4 will be carried out to facilitate the External Distribution, which is being undertaken to accomplish the Corporate Business Purposes. Internal Distribution 4 is motivated in whole or substantial part by the Corporate Business Purposes.
- (tttt) Internal Distribution 4 will not be used principally as a device for the distribution of the earnings and profits of Controlled 2 or Distributing 4 or both.
- (uuuu) There is no plan or intention to liquidate any member of the Distributing 4 SAG engaged in Business A1a or any member of the Controlled 2 SAG engaged in Business A2a, to merge any member of the Distributing 4 SAG or Controlled 2 SAG with any other entity or to sell or otherwise dispose of the assets of any member after Internal Distribution 4, except in the ordinary course of business.
- (vvvv) The total adjusted basis and the fair market value of the assets transferred by Distributing 4 to Controlled 2 in Contribution 5 each will equal or exceed the sum of (i) the total liabilities to be assumed (as determined under § 357(d)) by Controlled 2 and (ii) the total amount of any money (the Cash Proceeds) and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 4 from Controlled 2 and transferred to Distributing 4 creditors in connection with the reorganization.
- (www) Any liabilities assumed (as determined under § 357(d)) by Controlled 2 in Contribution 5 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (xxxx) The total fair market value of the assets transferred to Controlled 2 in Contribution 5 will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 2 in connection with Contribution 5; (ii) the amount of any liabilities owed to Controlled 2 by Distributing 4 that are discharged or extinguished in connection with Contribution 5; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 4 in

connection with Contribution 5. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after Contribution 5.

- (yyyy) The aggregate fair market value of the assets Distributing 4 transfers to Controlled 2 in Contribution 5 will equal or exceed the aggregate adjusted basis of those assets.
- (zzzz) Distributing 4 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of Contribution 5 and Internal Distribution 4.
- (aaaaa) No two parties to Internal Distribution 4 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (bbbbb) Immediately before Internal Distribution 4, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 4 has in the Controlled 2 stock or the stock of any direct or indirect subsidiary of Controlled 2 will be included in income immediately before Internal Distribution 4 to the extent required by regulations (see § 1.1502-19). At the time of Internal Distribution 4, Distributing 4 will not have an excess loss account in the stock of Controlled 2 or the stock of any direct or indirect subsidiary of Controlled 2.
- (ccccc) Apart from debt arising in the Continuing Relationships and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 4 (or any entity controlled directly or indirectly by Distributing 4) at the time of, or after, Internal Distribution 4.
- (dddd) Payments made in connection with all continuing transactions between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 4 (or any entity controlled directly or indirectly by Distributing 4) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (eeee) For purposes of § 355(d), immediately after Internal Distribution 4, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 4 stock, that was acquired by

purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 4.

- (fffff) For purposes of § 355(d), immediately after Internal Distribution 4, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 4 or (ii) attributable to distributions on Distributing 4 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 4.
- (ggggg) Internal Distribution 4 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 2 or Distributing 4 (including any predecessor or successor of either corporation).
- (hhhhh) Immediately after the transaction (as defined in § 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before Internal Distribution 4, or (ii) neither Distributing 4 nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (iiiiii) The third-party debt repaid in part by Distributing 4 with the Cash Proceeds will not exceed the weighted quarterly average of the Distributing 4 debt owed to unrelated third parties for the 12-month period ending on the close of business on or about Date 2, the last full business day before the date on which the Distributing 5 Board of Directors first authorized consideration of a potential separation of Business A1 (including Business A1a) from Business A2 (including Business A2a).

The External Distribution

The following representations have been made regarding the External Distribution:

- (jjjjj) Any indebtedness owed by Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) to Distributing 5 (or any entity controlled directly

or indirectly by Distributing 5) after the External Distribution will not constitute stock or securities.

- (kkkkk) Apart from Controlled 2 stock distributed with respect to Existing Distributing 5 Restricted Stock, no part of the consideration distributed by Distributing 5 in the External Distribution will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing 5. Any shares of Controlled 2 stock distributed in the External Distribution as or with respect to restricted stock of Distributing 5 will not represent more than 20 percent of the Controlled 2 stock outstanding.
- (IIII) Distributing 5 and Controlled 2 each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (mmmmm) The five years of financial information submitted for Business A1a conducted by the Distributing 5 SAG and for Business A2a to be conducted by the Controlled 2 SAG (which includes Controlled 1 and the Pship 2 Entities) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (nnnnn) Neither Business A1a conducted by the Distributing 5 SAG nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, Sub 1 (through LLC 17, LLC 18 and LLC 19) will have been the principal owner of the goodwill and significant assets of Business A1a and will continue to be the principal owner following the External Distribution.
- (ooooo) Neither Business A2a to be conducted by the Controlled 2 SAG (which includes Controlled 1 and the Pship 2 Entities) nor control of a corporation conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, Controlled 1 and/or the Pship 2 Entities will have been the principal owners of the goodwill and significant assets of Business A2a and will continue to be the principal owners following the External Distribution.

- (ppppp) Apart from the Continuing Relationships, the Distributing 5 SAG will continue the active conduct of Business A1a, independently and with its separate employees, following the External Distribution.
- (qqqqq) Apart from the Continuing Relationships, Controlled 2 (through Controlled 1 and the Pship 2 Entities) will continue the active conduct of Business A2a, independently and with its separate employees, following the External Distribution.
- (rrrrr) The External Distribution will be carried out (a) to permit the senior management of Distributing 5 to focus solely on Business A1 (including Business A1a) and the management of Controlled 2 to focus solely on Business A2 (including Business A2a), thereby (i) allowing each business to pursue its own distinct opportunities and growth plans and (ii) eliminating internal competition for capital and other inherent managerial and operational conflicts between the businesses; (b) to permit Business A2 to develop a more tailored operating and marketing strategy to address its unique aspects; and (c) to permit Business A2 to obtain greater access to capital markets and pursue strategic acquisitions leading to increased growth.
- (sssss) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled 2 or Distributing 5 or both.
- (ttttt) There is no plan or intention to liquidate any member of the Distributing 5 SAG engaged in Business A1a or any member of the Controlled 2 SAG engaged in Business A2a, to merge any member of either SAG with any other entity or to sell or otherwise dispose of the assets of any member after the External Distribution, except in the ordinary course of business.
- (uuuuu) Distributing 5 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the External Distribution.
- (vvvvv) No two parties to the External Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (wwwww) Immediately before the External Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 5 has in the Controlled 2 stock or the stock of any direct or indirect subsidiary of Controlled 2 will be included in income immediately before the External Distribution to the extent required by

regulations (see § 1.1502-19). At the time of the External Distribution, Distributing 5 will not have an excess loss account in the stock of Controlled 2 or the stock of any direct or indirect subsidiary of Controlled 2.

- (xxxxx) Apart from debt arising in the Continuing Relationships and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 5 (or any entity controlled directly or indirectly by Distributing 5) at the time of, or after, the External Distribution.
- (yyyyy) Payments made in connection with all continuing transactions between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 5 (or any entity controlled directly or indirectly by Distributing 5) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (zzzzz) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 5 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 5 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- (aaaaa) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 5 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- (bbbbb) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 2 or Distributing 5 (including any predecessor or successor of either corporation).

- (ccccc) Immediately after the transaction (as defined in § 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Controlled 2 or Distributing 5.
- (ddddd) The payment of cash to Distributing 5 shareholders in lieu of fractional shares of Controlled 2 stock will be solely for the purpose of avoiding the expense and inconvenience to Controlled 2 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of Distributing 5 from the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the External Distribution. It is also intended that no Distributing 5 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 stock. Neither Controlled 2 nor Distributing 5 is aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled 2 through the purchase of bundled Controlled 2 shares sold in connection with the issuance of cash in lieu of fractional shares.

Rulings

Based solely on the information submitted and the representations made, we rule as follows regarding the Proposed Transactions:

Contribution 1

- (1) No gain or loss will be recognized by Distributing 2 on the transfer of Sub 1 stock to Distributing 1 in constructive exchange for Distributing 1 stock (§ 351(a)).
- (2) No gain or loss will be recognized by Distributing 1 on the receipt of Sub 1 stock in constructive exchange for Distributing 1 stock (§ 1032(a)).
- (3) The basis that Distributing 1 has in the Sub 1 stock received from Distributing 2 will equal the basis that Distributing 2 had in the Sub 1 stock immediately before the transfer (§ 362(a)).
- (4) The basis of the stock of Distributing 1 in the hands of Distributing 2 will be increased by an amount equal to the basis of the Sub 1 stock transferred in Contribution 1 (§ 358(a)).
- (5) The holding period of the Distributing 1 stock constructively received by Distributing 2 will include the period during which Distributing 2 held the Sub 1 stock, provided the Sub 1 stock is held as a capital asset on the date of Contribution 1 (§ 1223(1)).

- (6) The holding period of the Sub 1 stock received by Distributing 1 will include the period during which Distributing 2 held the Sub 1 stock (§ 1223(2)).

Contribution 2 and Internal Distribution 1

- (7) Contribution 2, followed by Internal Distribution 1, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 1 each will be “a party to a reorganization” within the meaning of § 368(b).
- (8) No gain or loss will be recognized by Distributing 1 on Contribution 2 (§§ 361(a) and 357(a)).
- (9) No gain or loss will be recognized by Controlled 1 on Contribution 2 (§ 1032(a)).
- (10) The basis of each asset received by Controlled 1 in Contribution 2 will equal the basis of that asset in the hands of Distributing 1 immediately before Contribution 2 (§ 362(b)).
- (11) The holding period of each asset received by Controlled 1 in Contribution 2 will include the period during which Distributing 1 held that asset (§ 1223(2)).
- (12) No gain or loss will be recognized by Distributing 1 on Internal Distribution 1 (§ 361(c)(1)).
- (13) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on Internal Distribution 1 (§ 355(a)(1)).
- (14) Immediately following Internal Distribution 1, the basis that Distributing 2 had in a share of Distributing 1 stock before Internal Distribution 1 will be allocated between the share of Distributing 1 stock with respect to which Internal Distribution 1 is made and the share of Controlled 1 stock received with respect to the share of Distributing 1 stock in proportion to the fair market value of each (§ 358(b)(2) and (c); § 1.358-2(a)(2)).
- (15) The holding period of the Controlled 1 stock received by Distributing 2 in Internal Distribution 1 will include the holding period of the Distributing 1 stock on which Internal Distribution 1 is made, provided the Distributing 1 stock is held as a capital asset on the date of Internal Distribution 1 (§ 1223(1)).
- (16) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).

- (17) Except for purposes of § 355(g), any payments between Distributing 1 and Controlled 1 that are made following Internal Distribution 1 pursuant to the Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before Internal Distribution 1 or for a taxable period beginning before but ending after Internal Distribution 1 and (ii) will not have become fixed and ascertainable until after Internal Distribution 1, will be treated as occurring immediately before Internal Distribution 1 (*Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

Contribution 3 and Internal Distribution 2

- (18) Contribution 3, followed by Internal Distribution 2, will be a reorganization under § 368(a)(1)(D). Distributing 2 and Controlled 1 each will be “a party to a reorganization” within the meaning of § 368(b).
- (19) No gain or loss will be recognized by Distributing 2 on Contribution 3 (§§ 361(a) and 357(a)).
- (20) No gain or loss will be recognized by Controlled 1 on Contribution 3 (§ 1032(a)).
- (21) The basis of each asset received by Controlled 1 in Contribution 3 will equal the basis of that asset in the hands of Distributing 2 immediately before Contribution 3 (§ 362(b)).
- (22) The holding period of each asset received by Controlled 1 in Contribution 3 will include the period during which Distributing 2 held that asset (§ 1223(2)).
- (23) No gain or loss will be recognized by Distributing 2 on Internal Distribution 2 (§ 361(c)(1)).
- (24) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 on Internal Distribution 2 (§ 355(a)(1)).
- (25) Immediately following Internal Distribution 2, the basis that Distributing 3 had in a share of Distributing 2 stock before Internal Distribution 2 will be allocated between the share of Distributing 2 stock with respect to which Internal Distribution 2 is made and the share of Controlled 1 stock received with respect to the share of Distributing 2 stock in proportion to the fair market value of each (§ 358(b)(2) and (c); § 1.358-2(a)(2)).

- (26) The holding period of the Controlled 1 stock received by Distributing 3 in Internal Distribution 2 will include the holding period of the Distributing 2 stock on which Internal Distribution 2 is made, provided the Distributing 2 stock is held as a capital asset on the date of Internal Distribution 2 (§ 1223(1)).
- (27) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).
- (28) Except for purposes of § 355(g), any payments between Distributing 2 and Controlled 1 that are made following Internal Distribution 2 pursuant to the Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before Internal Distribution 2 or for a taxable period beginning before but ending after Internal Distribution 2 and (ii) will not have become fixed and ascertainable until after Internal Distribution 2, will be treated as occurring immediately before Internal Distribution 2 (*Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

Contribution 4 and Internal Distribution 3

- (29) Contribution 4, followed by Internal Distribution 3, will be a reorganization under § 368(a)(1)(D). Distributing 3 and Controlled 1 each will be “a party to a reorganization” within the meaning of § 368(b).
- (30) No gain or loss will be recognized by Distributing 3 on Contribution 4 (§§ 361(a) and 357(a)).
- (31) No gain or loss will be recognized by Controlled 1 on Contribution 4 (§ 1032(a)).
- (32) The basis of each asset received by Controlled 1 in Contribution 4 will equal the basis of that asset in the hands of Distributing 3 immediately before Contribution 4 (§ 362(b)).
- (33) The holding period of each asset received by Controlled 1 in Contribution 4 will include the period during which Distributing 3 held that asset (§ 1223(2)).
- (34) No gain or loss will be recognized by Distributing 3 on Internal Distribution 3 (§ 361(c)(1)).

- (35) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 4 on Internal Distribution 3 (§ 355(a)(1)).
- (36) Immediately following Internal Distribution 3, the basis that Distributing 4 had in a share of Distributing 3 stock before Internal Distribution 3 will be allocated between the share of Distributing 3 stock with respect to which Internal Distribution 3 is made and the share of Controlled 1 stock received with respect to the share of Distributing 3 stock in proportion to the fair market value of each (§ 358(b)(2) and (c); § 1.358-2(a)(2)).
- (37) The holding period of the Controlled 1 stock received by Distributing 4 in Internal Distribution 3 will include the holding period of the Distributing 3 stock on which Internal Distribution 4 is made, provided the Distributing 3 stock is held as a capital asset on the date of Internal Distribution 3 (§ 1223(1)).
- (38) Earnings and profits, if any, will be allocated between Distributing 3 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).
- (39) Except for purposes of § 355(g), any payments between Distributing 3 and Controlled 1 that are made following Internal Distribution 3 pursuant to the Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before Internal Distribution 3 or for a taxable period beginning before but ending after Internal Distribution 3 and (ii) will not have become fixed and ascertainable until after Internal Distribution 3, will be treated as occurring immediately before Internal Distribution 3 (*Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

Contribution 5 and Internal Distribution 4

- (40) Contribution 5, followed by Internal Distribution 4, will be a reorganization under § 368(a)(1)(D). Distributing 4 and Controlled 2 each will be “a party to a reorganization” within the meaning of § 368(b).
- (41) No gain or loss will be recognized by Distributing 4 on Contribution 5 (§§ 361(a), 357(a), and 361(b)(3)).
- (42) No gain or loss will be recognized by Controlled 2 on Contribution 5 (§ 1032(a)).

- (43) The basis of each asset received by Controlled 2 in Contribution 5 will equal the basis of that asset in the hands of Distributing 4 immediately before Contribution 5 (§ 362(b)).
- (44) The holding period of each asset received by Controlled 2 in Contribution 5 will include the period during which Distributing 4 held that asset (§ 1223(2)).
- (45) No gain or loss will be recognized by Distributing 4 on Internal Distribution 4 (§ 361(c)(1)).
- (46) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 5 on Internal Distribution 4 (§ 355(a)(1)).
- (47) Immediately following Internal Distribution 4, the basis that Distributing 5 had in a share of Distributing 4 stock before Internal Distribution 4 will be allocated between the share of Distributing 4 stock with respect to which Internal Distribution 4 is made and the share of Controlled 2 stock received with respect to the share of Distributing 4 stock in proportion to the fair market value of each (§ 358(b)(2) and (c); § 1.358-2(a)(2)).
- (48) The holding period of the Controlled 2 stock received by Distributing 5 in Internal Distribution 4 will include the holding period of the Distributing 4 stock on which Internal Distribution 4 is made, provided the Distributing 4 stock is held as a capital asset on the date of Internal Distribution 4 (§ 1223(1)).
- (49) Earnings and profits, if any, will be allocated between Distributing 4 and Controlled 2 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).
- (50) Except for purposes of § 355(g), any payments between Distributing 4 and Controlled 2 that are made following Internal Distribution 4 pursuant to the Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before Internal Distribution 4 or for a taxable period beginning before but ending after Internal Distribution 4 and (ii) will not have become fixed and ascertainable until after Internal Distribution 4, will be treated as occurring immediately before Internal Distribution 4 (*Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

The External Distribution

- (51) No gain or loss will be recognized by Distributing 5 on the External Distribution (§ 355(c)).
- (52) No gain or loss will be recognized by (and no amount will be included in the income of) any shareholder of Distributing 5 on the External Distribution (§ 355(a)(1)).
- (53) Immediately following the External Distribution, the basis that each Distributing 5 shareholder had in a share of Distributing 5 stock before the External Distribution will be allocated between the share of Distributing 5 stock with respect to which the External Distribution is made and the share of Controlled 2 stock received with respect to the share of Distributing 5 stock (including any fractional share interest in Controlled 2 stock to which the shareholder may be entitled) in proportion to the fair market value of each (§ 358(b)(2) and (c); § 1.358-2(a)(2)). If a Distributing 5 shareholder that purchased or acquired shares of Distributing 5 stock on different dates or at different prices is not able to identify which particular share of Controlled 2 stock (or portion thereof) is received with respect to a particular share of Distributing 5 stock (or portion thereof), the shareholder may designate which share of Controlled 2 stock is received with respect to a particular share of Distributing 5 stock, provided the terms of the designation are consistent with the terms of the External Distribution.
- (54) The holding period of the Controlled 2 stock received by each shareholder of Distributing 5 in the External Distribution (including any fractional share interest in Controlled 2 stock to which the shareholder may be entitled) will include the holding period of the Distributing 5 stock on which the External Distribution is made, provided the Distributing 5 stock is held by the shareholder as a capital asset on the date of the External Distribution (§ 1223(1)).
- (55) Earnings and profits, if any, will be allocated between Distributing 5 and Controlled 2 in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33(e)(3).
- (56) Following the External Distribution, Controlled 2 will not be a successor of Distributing 5 for purposes of § 1504(a)(3). Therefore, Controlled 2 and its direct and indirect subsidiaries that are “includible corporations” under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal tax return with Controlled 2 as the common parent.

- (57) The receipt by a Distributing 5 shareholder of cash in lieu of fractional shares of Controlled 2 stock will be treated for federal tax purposes as if the fractional shares had been distributed to the Distributing 5 shareholder as part of the External Distribution and then had been disposed of by such shareholder for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (53) and the holding period attributed to the fractional shares in ruling (54)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).
- (58) Except for purposes of § 355(g), any payments between Distributing 5 and Controlled 2 that are made following the External Distribution pursuant to the Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution or for a taxable period beginning before but ending after the External Distribution and (ii) will not have become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External Distribution (*Cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether any of the Distributions satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether any of the Distributions are being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both;
- (iii) Whether any of the Distributions and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and
- (iv) The federal income tax consequences of the transactions described in Steps (ii), (iii), (ix) and (xiv) above.

Procedural Matters

This ruling letter is directed only to the taxpayers who requested it.

Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax return of each party involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of this letter.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

T. Ian Russell

T. Ian Russell
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)

cc: